

# Avoiding FLSA Recordkeeping Pitfalls

Automated Timekeeping with Sage TimeSheet

SAGE TIMESHEET



## Contents

<b>Introduction: Executive Summary</b> . . . . .	3
<b>The Fair Labor Standards Act</b> . . . . .	3
<b>Common Employer Mistakes with FLSA</b> . . . . .	4
<b>Consequences of Non-compliance</b> . . . . .	4
<b>Changes to Overtime Exemptions</b> . . . . .	4
<b>Accurate Records are Key to Avoiding FLSA and Litigation Exposure</b> . . . . .	5
Records for non-exempt workers: . . . . .	5
Records for exempt workers: . . . . .	5
<b>Sage TimeSheet Aids in FLSA Compliance</b> . . . . .	5
<b>About Sage Software</b> . . . . .	6

## Introduction: Executive Summary

The Fair Labor Standards Act (FLSA) was created in 1938, among the many labor laws of President Roosevelt's "New Deal." The act affects full and part-time workers in the private sector and in Federal, State, and local governments. It mandates overtime compensation for a work week in excess of 40 hours, sets minimum wage and recordkeeping standards, and establishes labor laws for minors.

Companies and government agencies must maintain thorough records to document compliance with the FLSA. Auditors from the Wage and Hour division of the Department of Labor can perform a review of timekeeping and payroll records at any time and companies deemed in violation of FLSA rules face steep penalties. The Wage and Hour division is responsible for enforcing compliance with federal labor laws, including the child labor, overtime, and minimum wage requirements of the FLSA.

To ensure FLSA compliance, time and payroll data for both exempt and non-exempt employees must be collected and maintained for at least three years. Most compliance mistakes made by businesses involve either inadequate or incomplete recordkeeping, or errors in payroll calculations. Automated timesheet software in conjunction with a company's payroll system can reduce both types of errors.

## The Fair Labor Standards Act

The FLSA applies to all employees of businesses whose gross sales volume exceeds \$500,000 and are engaged in interstate commerce, producing goods for interstate commerce, or otherwise selling, handling, or working on goods produced for such commerce. Additionally government agencies, hospitals, and schools must abide by FLSA regulations.

Employees of firms with gross sales volumes less than \$500,000 still may be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production. Such employees include those who:<sup>1</sup>

- Work in communications or transportation
- Regularly use the mail, telephones, or telegraph for interstate communication
- Keep records of interstate transactions
- Handle, ship, or receive goods moving in interstate commerce
- Regularly cross State lines in the course of employment
- Work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce.

There are also workers who may be exempt from either overtime or minimum wage provisions, or in some cases, both. Exempt employees include "white collar" workers, farm workers, domestic workers who live in their employer's residence, some commissioned sales persons, certain seasonal or recreational workers, and some types of transportation and news media employees.<sup>2</sup>

While the FLSA does provide standards for minimum wage and overtime pay, several other employee benefits are not covered by the FLSA. The FLSA does not require vacation, holiday, severance, or sick leave, nor does it provide rules for meals or other breaks throughout the work day. Other than establishing overtime pay, the FLSA does not dictate any type of extra premium pay for workers who report on weekends or holidays. The FLSA also does not require pay stubs, although most employers choose to give this information to employees.<sup>3</sup>

<sup>1</sup>Department of Labor, *Handy Reference Guide to the Fair Labor Standards Act (FLSA)*, [www.dol.gov/esa/regs/compliance/whd/hrg.htm#12](http://www.dol.gov/esa/regs/compliance/whd/hrg.htm#12), 2005.

<sup>2</sup>Department of Labor, *Handy Reference Guide to the Fair Labor Standards Act (FLSA)*, [www.dol.gov/esa/regs/compliance/whd/hrg.htm#12](http://www.dol.gov/esa/regs/compliance/whd/hrg.htm#12), 2005.

<sup>3</sup>G. Neil Company website, "Fair Labor Standards Act: The Basics," [www.gneil.com/info/fairlaboract/default.asp#Recordkeeping%20Requirements](http://www.gneil.com/info/fairlaboract/default.asp#Recordkeeping%20Requirements), 9/2/2005.

## Common Employer Mistakes with FLSA

Most employer errors in FLSA compliance occur because of inaccurate recordkeeping or calculation mistakes. In an article for *Workcite Employment and Benefits Legal Update*, Brian Barger, an employer services attorney, cites the following most common recordkeeping mistakes committed by employers:<sup>4</sup>

- Not keeping a timesheet or timecard for non-exempt workers.
- Failing to record time of clock-in and clock-out.
- Failure to keep records of non-authorized overtime.
- Lack of records surrounding work performed off the clock, such as weekend office, or at-home work.
- Failure to record and pay for break periods.
- Assuming that all salaried employees are exempt employees.
- Lack of accurate time and payroll records.

## Consequences of Non-compliance

The Department of Labor employs investigators in 400 offices around the country who are constantly engaged in rigorous nation-wide workplace inspections. In addition to owing back pay to workers, willful violation of certain FLSA provisions can result in fines and criminal prosecution:

- Firing or discriminating against an employee for filing an FLSA complaint can result in fines up to \$10,000. A second offense can result in a prison sentence.
- Failing to comply with FLSA youth labor laws exposes employers to criminal prosecution and fines up to \$11,000.
- Willful or repeated minimum wage or overtime pay violations may be subject to a civil penalty of \$1,100.

Violation of FLSA leaves organizations vulnerable to costly employee lawsuits. Companies have paid out millions of dollars due to FLSA-related litigation. Some recent examples include:

- *Personett v. UPS* resulted in UPS drivers winning \$12 million dollars in Washington State.
- Two thousand Taco Bell workers recovered \$3 million dollars in Washington State for off-the-clock work.
- Wal-Mart faces 39 class action lawsuits involving hundreds of thousands of workers seeking tens of millions of dollars.

## Changes to Overtime Exemptions

The DOL changed the regulations governing FLSA “white collar” overtime exemptions in order to reflect the evolution of American workforce since 1938. These changes have had a broad effect on human resources administrators throughout the country. These changes include:

- Increase in minimum qualifying “white collar” salary from \$155 to \$425 per week (\$23,660 annually).
- Administrative Duties Exemption: the “discretion and independent judgment” test has been replaced with a new test in which the employees hold a “position of responsibility.”
- Professional Duties Exemption: The new rules allow workers who perform substantially the same jobs as degreed employees to qualify as exempt if they learn the equivalent job through work experience.

<sup>4</sup>Brian Barger, “Top 10 FLSA Mistakes,” *Workcite Employment and Benefits Legal Update*, Helms, Mullis & Wicker website, <http://www.hmw.com/workcite/20041015.htm>, October 15, 2004.

## Accurate Records are Key to Avoiding FLSA and Litigation Exposure

Every covered employer must keep certain records for each non-exempt worker. The Act requires no particular form for the records, but does require that the following records be maintained:<sup>5</sup>

### Records for non-exempt workers:

- Identifying information, including employee's name, home address, occupation, gender, and birth date if under 19 years of age
- Time parameters defining the employee's workweek
- Total hours worked per day and week
- Total straight-time earnings
- Regular hourly pay rate during any week that includes overtime worked
- Total overtime paid
- Any wage deductions or additions

### Records for exempt workers:

- Employee's name, home address, occupation, gender, and birth date if under 19 years of age
- Time parameters defining the employee's workweek
- Wages paid for the pay period
- Date paid and the corresponding pay period

The records described above must be accurate and complete to ensure corporate compliance. FLSA regulations require the data to be kept for three years and any supplementary data for at least two years. Records must be kept at the place of business or in a central storage location. Whether kept on paper, a computer, or in microfilm format, businesses must be able to produce the data immediately in the event that Wage and Hour auditors inspect them.

Automated timekeeping software simplifies compliance with FLSA recordkeeping requirements. These solutions keep an electronic record of each employee's identifying information and give employees a consistent way to record the hours they work. The timesheet data can then be transferred to a payroll solution or outsourcing service for accurate payroll calculations and preparation. Finally, the timekeeping solution easily stores data for years and can quickly generate reports for Wage and Hour auditors.

## Sage TimeSheet Aids in FLSA Compliance

Whether used as a stand-alone timesheet solution, or as an integrated time tracking system providing data to project management, payroll and accounting systems, Sage TimeSheet helps ensure FLSA compliance. Its sophisticated time tracking data collection takes the worry out of government reporting compliance, helping to avoid costly penalties.

Sage TimeSheet provides a single point-of-entry for both timesheet recording and management approvals, maintaining all of the critical pieces of FLSA information. The Time Clock feature enables employees to clock-in and clock-out via computer, providing both employers and employees with a convenient way to keep precise records. And online timesheet capabilities enable employees to enter time from a remote location.

Sage TimeSheet eliminates inefficient manual timecard processes, avoids duplicate data entry and reduces the potential of timekeeping and payroll errors. The employee timesheet interfaces with most major payroll applications, allowing companies to import employee lists from the payroll application and export completed time card information directly back to the payroll system. Sage TimeSheet automatically calculates overtime, sick leave, vacation and holiday time for precise and automatic payroll and job costing.

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<sup>5</sup>CCH Business Owner's Toolkit, www.toolkit.cch.com, 2005.

## About Sage Software

Sage Software supports the needs, challenges and dreams of nearly 2.8 million small and mid-sized business customers in North America through easy-to-use, scalable, and customizable software and services.

Sage Software is a subsidiary of The Sage Group plc, a leading global supplier of accounting and business management software solutions and related products and services for small and mid-sized businesses. Formed in 1981, Sage was floated on the London Stock Exchange in 1989 and the Group now has 5.5 million customers and employs over 13,900 people worldwide.

For more information, please visit the Web site at [www.sagetimesheet.com](http://www.sagetimesheet.com) or call **866-271-6055**.

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